

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Paul Sambursky,)	
)	
Petitioner,)	ORDER (AMENDED) DENYING MOTION TO
)	STRIKE
vs.)	
)	
Tim Schuetzle, Warden of)	Case No. 1:08-cv-068
the North Dakota State Penitentiary,)	
)	
Respondent.)	

On September 12, 2008, the Respondent filed a Motion to Dismiss. On October 7, 2008, the Petitioner filed a response to the Respondent's motion. On October 9, 2008, the Respondent filed a reply to the Petitioner's response.

On October 14, 2008, the Petitioner filed a Motion to Strike the Respondent's reply on the grounds that it was improper, unnecessary, and that he should have the last say on this matter seeing as he ultimately shoulders the burden of proof with respect to his habeas petition.

The Respondent's Motion to Dismiss is clearly dispositive. Local Rule 7.1(A) states the following about dispositive motions:

Upon serving and filing a dispositive motion, the moving party must contemporaneously serve and file a memorandum in support not to exceed forty (40) pages The adverse party has thirty (30) days after serve of the memorandum in support to serve and file a response subject to the same limitations. The moving party has five (5) days to serve and file a reply not to exceed ten (10) pages.

D.N.D. Civ. L.R. 7.1 (A)(1) (emphasis added).

The Respondent has moved for dismissal. And, as the moving party, it is permitted to file a reply in support of its motion. The Petitioner's Motion to Strike (Docket No. 10) is therefore **DENIED**.

IT IS SO ORDERED.

Dated this 15th day of October, 2008.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge